IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL WRIT PETITION NO.4619 OF 1997

The Veterinary Practitioners
Association, Maharashtra, through
its General Secretary,
Dr.Narayan Joshi Petitioner

Vs.

1. The Union of India
through the Department of Animal
Husbandry and Dairy, having its
office at Krishi Bhavan, New Delhi.

2. The State of Maharashtra,
through the Secretary, Department
of Animal Husbandary, Sachivalaya,
Mumbai. Respondents

Mr.V.P.Sawant for petitioner.

Mr.Rajeev Chavan with Mr.Kiran Kandpile i/b Mr.T.C.
Kaushik for Resp.No.1.

Ms.P.S.Cardozo, AGP for Resp.no.2.

CORAM: B.H.MARLAPALLE & D.B.BHOSALE,JJ.

April 26, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. The petitioner, a registered Association under the Trade Unions Act, 1926 and representing the Veterinary Practitioners in the State of Maharashtra has approached us under Article 226 of the Constitution and prayed for (a) the declaration that the non-graduate Veterinary Practitioners who are registered under the Maharashtra Veterinary

Practitioners Act, 1971 (for short to be referred as "the State Veterinary Act") are eligible to practice veterinary medicine in the same manner and on such conditions as they were prior to coming into force of the Indian Veterinary Councils Act, 1984 ("Central Veterinary Act" for short) in the State of Maharashtra; (b) to declare that non-graduate Veterinary Practitioners who are eligible to be registered under the State Veterinary Act will be permitted to practice veterinary medicine in the same manner and on such conditions as they were prior to the coming into force of the Central Veterinary Act in the State of Maharashtra; and (c) for directions to renew the registration of non-graduate Veterinary Practitioners in the register maintained by the State Council under the State Veterinary Act till the coming into force of the Central Veterinary Act. At the outset we must note that this petition was moved before us on 12th September 1997 and in the affidavit-in-reply filed by the Under Secretary to the Government of Maharashtra, Agriculture, Animal Husbandry, Dairy and Fisheries Development Department, it has been pointed out that the Central Government published a notification in the Official Gazette and appointed the 1st day of August 1997 as

the date on which the Central Veterinary Act shall come into force in the State of Maharashtra and accordingly the State Veterinary Act of 1971 came to be repealed from that date. Under these circumstances prayer (c) above does not survive.

2. The petitioner Association claims that it represents about 6000 Veterinary Practitioners in the State of Maharashtra and it is also affiliated to the Veterinary Services Federation of India, an apex body functioning at the national level. As per the petitioner there are about 5283 persons holding a degree in Veterinary and Animal Husbandry Science, 319 persons holding in service Diploma, Veterinary and Animal Husbandry Science registered under Part I of Section 18 of the State Veterinary Act. In addition there are 3841 persons holding the qualifications of Livestock Supervisors' Training Course and Diploma in Dairy Farm and Animal Husbandry registered under Part II of Section 18 of the State Veterinary Act.

. Section 30 of the Central Veterinary Act states that no person, other than a registered Veterinary Practitioner shall:

(a) hold office as veterinary physician or surgeon or any other like office by whatever name called in Government or in any institution maintained by a local or other authority;

(b) practice veterinary medicine in any State:

Provided that the State Government may, by order, permit a person holding a diploma or certificate of veterinary supervisor, stockman or stock assistant, by whatever name called, issued by the Directorate of Animal Husbandry, by whatever name called, of any State or any veterinary institution in India, to render under the supervision and direction of a registered veterinary practitioner, minor veterinary services.

. The term "Minor veterinary services" has been explained to mean the rendering of preliminary veterinary aid, like vaccination, castration, and dressing of wounds, and such other types of preliminary aid or the treatment of such ailments as

the State Government may, by notification in the Official Gazette, specify in this behalf.

. As per clause (c) of Section 30 no person, other than a registered veterinary practitioner, shall be entitled to sign or authenticate a veterinary health certificate or any other certificate required by any law to be signed or authenticated by duly qualified veterinary practitioner and as per clause (d) no person, other than a registered veterinary practitioner, shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872, on any matter relating to veterinary medicine.

3. When both the Houses of State Legislature passed a resolution on 29th March 1997 as required under Article 252(1) of the Constitution to adopt in the State of Maharashtra the Central Veterinary Act and to repeal the State Veterinary Act, the petitioner-Association was apprehensive that some of its existing members who otherwise find their place in the register with the State Veterinary Council maintained in Part I, could be adversely affected by

the enforcement of the Central Veterinary Act and, therefore, it appears from the record they had moved the State Government and various authorities in the Veterinary and Animal Husbandry Department so as to protect the interests of non-graduate Veterinary and Animal Husbandry qualification holders. It was their pursuit to ensure that the diploma holders in Animal Husbandry or Veterinary Science are also allowed to be enrolled as Veterinary Practitioners inspite of the fact that as per Section 30 of the Central Veterinary Act they are not entitled for such a registration. It has been also pointed out by the State of Maharashtra that similar issue was taken up before the Delhi High Court in Writ Petition No.2548 of 1992 and on 17/11/2004 the Delhi High Court passed an order to examine the issue of inclusion of two years' diploma in the Ist Schedule to the Indian Veterinary Councils Act, 1984 and accordingly the Department of Animal Husbandry and Dairying, Ministry of Agriculture examined the said issue in consultation with the Ministry of Law, Government of India and passed an order on 23rd March 2005 reading as under"

"As a matter of educational policy, it has

been decided that Diploma/Certificate qualification cannot be included in the first schedule to the Act and a person possessing such a Diploma/certificate qualification shall not be legally entitled to enjoy the status of an independent Registered Veterinary Practitioner."

. The affidavit further states that the Ministry of Agriculture, Government of India also considered the issue of practice by diploma / certificate holders and vide its letter dated 14th February 2003 it informed, "The issue of incorporation of names of Veterinary Diploma or Veterinary Certificate holders under Section 30 of Indian Veterinary Council Act, 1984 was examined by the members of Joint Parliamentry Committee which listed different states of the Country. After giving due consideration to the representations given by Stock Assistants Association, Joint Parlimentry Committee did not accept their plea for inclusion of Veterinary Diploma/Certificate course into the Indian Veterinary Council Act, 1984". It has also been pointed out that in Civil Appeal No.13245-46 of 1996 decided by the Apex Court on 6th January, 2000 the Veterinary

Council regulations framed under Section 22 of the Central Veterinary Act were upheld.

4. The petitioner-Association states that if the Central Veterinary Act is followed strictly for granting registration to veterinary practitioners, the veterinary and animal husbandry interest all over the State of Maharashtra will be adversely affected more so because the number of such qualified practitioners is far less than the demand for them all over the State. This submission has been dealt with in the affidavit-in-reply filed by the State Government. It has been pointed out that as at present there are five veterinary colleges and one post graduate veterinary college in the State of Maharashtra. We are also informed that there is a Veterinary University at Nagpur. Every year around 250 veterinary graduates come out from these colleges and about 2000 to 2500 veterinary graduates are engaged in private practice. It has been pointed out that as per the reports published by the Government of Maharashtra one qualified veterinary practitioner is available at 5 Kms. distance on an average in the State of Maharashtra.

5. Section 23 of the Central Veterinary Act deals with the Indian Veterinary Practitioners' register and sub-section (1) reads as under:

> (1) The Council shall, as soon as may be after the commencement of this Act, cause to be maintained in such form and in such manner as may be provided by regulations a register of veterinary practitioners to be known as the Indian veterinary practitioners register which shall contain the names of all persons who possess the recognised veterinary qualifications and **who are for the time being enrolled on a State veterinary register of the State to which this Act extends."** (Emphasis supplied).

In our opinion, Section 23(1) has protected the existing practitioners whose names appear on the enrolment of the State veterinary register as veterinary practitioners and this issue of granting registration under the State Veterinary Act was covered under Section 18 therein. Section 18 of the State Veterinary Act, to the extent relevant, reads as under:

"18. Persons entitled to be registered:

(1) Subject to the provisions of this Act, every person shall, if he holds any of the qualifications included in the Schedule, be entitled on application to be registered, on payment of such fee as may be provided by regulations and on giving evidence to the satisfaction of the Registration Officer or the Registrar, as the case may be, of his possession of a qualification entitling him for registration.

(2) The State Government may, after consulting the Registration Officer or the Council, as the case may be, permit the registration of any person who has been actually conducting veterinary practice in the State of Maharashtra on such conditions as may be provided for by regulations made for this purpose notwithstanding the fact that he may not be possessing qualifications entitling him to have his name entered in the register.

(3) Every person for the time being registered with the Veterinary Council of any other State in India under any law for the registration of veterinary practitioners in force in such State shall, if reciprocity of registration has been arranged with such Council, be entitled to be registered under this Act, on making an application in that behalf, on payment of such fee as may be provided by regulations and on his informing the Registration Officer or the Registrar, as the case may be, of the date of registration under the said law and on giving a correct description of his qualifications with the dates on which they were granted."

6. It is clear that the persons registered under Section 18(1) and possessing qualifications included in the schedule are listed in Part I register of the State Veterinary Council and those persons who are registered under sub-section 2 and under the regulations separately framed by the State Government are entered in Part II register of the State Veterinary Council. In the schedule to the State Veterinary Act recognised veterinary degrees and

diplomas granted in the institutions all over the country have been listed and we have noticed that in addition to the graduation degree in veterinary science and animal husbandry, two year diploma certificate awarded by the Bombay Veterinary college and Nagpur Veterinary College were also recognised and incorporated as the requisite qualifications for registration under Section 18(1) of the State Veterinary Act. When the State Council granted registration to the veterinary practitioners under Section 18(1) prior to passing of the resolution by both the Houses of the Legislature, it was duly satisfied that such practitioners possessed qualifications listed in the schedule to the State Veterinary Act and, therefore, all these practitioners are duly protected under the provisions of Section 23(1) and they are not covered by the limitations put under Section 30 of the Central Veterinary Act. In our considered opinion the veterinary practitioners, whether degree holders or diploma holders, who were enrolled in the State Veterinary Council register, Part I prior to March 1997 will stand protected under Section 23(1) of the Central Veterinary Act and thus practitioners whose names have been enrolled and listed in Part II

register under Section 18(2) of the State Veterinary Act and the regulations framed by the State Government do not have the benefit of such protection and their enrolments, even if granted, shall be subject to the applicability of Section 30 of the Central Veterinary Act. They will have to approach the State Government under the proviso below Section 30 and it is for the State Government to consider their cases strictly under the Central Veterinary Act and the regulations framed under Section 22 therein by the Government of India. We also make it clear that the enrolments from 1st August 1997 onwards of veterinary practitioners shall be strictly governed under the provisions of Section 23 read with Section 30 of the Central Veterinary Act and the rules / regulations framed thereunder by the Government of India. A contention was raised before us that those students who were admitted either in the first or second year of the two years diploma course in the Veterinary College at Mumbai and/or at Nagpur are required to be protected and considered for granting enrolment as veterinary practitioners under the Central Veterinary Act and in support of these contentions reliance has been placed on a decision of this Court in the case of Anil s/o Dnyandeorao

Barbude & anr. v. The State of Maharashtra & ors. **[2000 (1) Bom.C.R. 416]**. However, we have noticed that before the petition was filed, the Association had not approached the State Government for such a limited protection and it is for the State Government and the State Veterinary Council to address on such a request, keeping in mind the provisions of law. It would not be safe for us to deal with this issue and take away the discretionary powers of the State Government, if any, under the Central Veterinary Act as well as the rules / regulations framed thereunder. We, therefore, cannot entertain the second prayer made in this petition i.e. for a declaration that the diploma holders or non-graduate holders should be allowed to be enrolled as veterinary practitioners and the relief sought in prayer (a) as reproduced hereinabove is covered by the provisions of Section 23(1) of the Central Veterinary Act and we have already upheld that the existing registered veterinary practitioners whose names appear in the register Part I maintained by the State Veterinary Council are duly protected as such even on enforcement of the Central Veterinary Act in the State of Maharashtra from 1st August 1997.

7. The writ petition is thus allowed partly in terms of the above clarifications and it is dismissed for the relief prayed for in terms of clause (b) above.

(D.B.BHOSALE,J.) (B.H.MARLAPALLE,J.)